

PD-0322-21

IN THE COURT OF
CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
6/14/2021
DEANA WILLIAMSON, CLERK

SAMUEL CRAWFORD PATTERSON,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

On Petition for Discretionary Review from the
Tenth Court of Appeals in No. 10-19-00243-CR
reversing the Judgment in Cause Number
17-00251-CRF-361 from the 361st District Court of
Brazos County, Texas

APPELLANT'S REPLY TO
STATE'S PETITION FOR DISCRETIONARY REVIEW

ORAL ARGUMENT REQUESTED

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Reply to State's First and Third Grounds for Review (argued together)

The Court of Appeals Memorandum Opinion breaks no new legal ground applying recognized law that particularity of description of an individual dwelling unit inside a larger structure is required when the record establishes law enforcement knew privacy and trespass interest existed in that individual dwelling unit and for identical reasons safe harbor in the good faith exception to the warrant requirement is not applicable

Reply to State's Second Ground for Review

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ARGUMENT

Reply to State's First and Third Grounds for Review (argued together)

The Court of Appeals Memorandum Opinion breaks no new legal ground applying recognized law that particularity of description of an individual dwelling unit inside a larger structure is required when the record establishes law enforcement knew privacy and trespass interest existed in that individual dwelling unit and for identical reasons safe harbor in the good faith exception to the warrant requirement is not applicable

- A. The Court of Appeals Memorandum Opinion relied on long established law to define Patterson's privacy and trespass interest in his individual leased space, unit 216, and not the larger structure where it was located

The Court of Appeals Memorandum Opinion recognized that *State v. Rodriguez*, 521 S.W.3d 1 (Tex. Crim. App. 2017) controlled the privacy and trespass interests of Patterson in his individual dwelling unit inside a larger structure. *Rodriguez* followed long standing law defining privacy and trespass interests in individual units inside a larger structure for Fourth Amendment purposes. Patterson's interest in his unit was indistinguishable in standing analysis from *Rodriguez*. The Court of Appeals followed binding precedent from this Court and the Supreme Court of the United States that if a warrant affiant knows privacy and trespass interests exist in individual dwelling spaces, particularity of description is required.

Rodriguez involved a dormitory room at Howard Payne University leased and lived in by two students, Rodriguez and Adrienne Sanchez. *Id.* at 5. In finding Constitutional privacy protections applied, the Texas Court of Criminal Appeals

wrote, “[Rodriguez] enjoyed the same Fourth Amendment protection from unreasonable searches and seizures in her dormitory room as would any other citizen in a private home.”” *Id.*

Rodriguez followed decisions from this Court and the Supreme Court of the United States that define privacy and trespass protections based on the occupant’s exclusive right to occupy the space, their right to exclude others, and their autonomy in that space, not just from government intrusion, but other persons occupying rooms or spaces whether physical or technological. *See, e.g., Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964) (rented hotel room); *Moberg v. State*, 810 S.W.2d.190, 194 (Tex. Crim. App. 1990)¹ (same); *McDonald v. United States*, 335 U.S. 451, 69 S.Ct. 451, 452-53 (1948) (rented room at residence); *State v. Granville*, 423 S.W.3d 399, 405-408 (Tex. Crim. App. 2014) (cell phone); *Carpenter v. United States*, __ U.S. __, 138 S.Ct. 2206, 2216-18 (2018) (historical cell phone location data).

In this case, the warrant affidavit presented to the magistrate established the need for a particular description of each unit. The affidavit recites the affiant knew the larger fraternity house structure contained twenty-five individually leased units and the individual units belonged to the respective lessees. (SX 1 [pg.4/6 “Synopsis of Investigation]) (Appendix One).

¹ The Court of Criminal Appeals has pending a case styled *Tilghman v. State*, PD-0676-19, submitted on December 11, 2019. The merits briefing in that case at the Court of Criminal Appeals focuses primarily on eviction from a leased hotel room as extinguishing the privacy and trespass Fourth Amendment standing that exist under *Stoner* and *Moberg*. No similar issue exists here.

The warrant affidavit attests Unit 216 belonged to Patterson. (Id.) The affidavit recitation of common bathrooms, kitchen, and meeting rooms does not alter the basic dynamic that these twenty-five separate living units inside the larger structure were individually leased. The commonality of certain spaces in the larger structure has never been the focus for defining privacy in individual spaces. *See, e.g. Rodriguez* at 9. (“Courts have agreed that a dorm room is a home away from home”).

Rodriguez did not turn on whether the dorm room had an individual or common kitchen, bath, or meeting space.² Unlike this case, the defendant in *Rodriguez* shared her space with a roommate. This arguable evidence of diminished privacy in that case played no role in the Court of Criminal Appeals decision finding Fourth Amendment protection existed in that living space.

The State’s Petition points to non-fraternity member exclusion of non-residents at the structure to support their contention in Ground Three that the larger structure was a single dwelling space. This disregards current on and off campus student housing. Whether at a private institution such as Baylor University or public ones like Texas A&M University and The University of Texas, on and off campus

² The State’s Petition asserts the Court of Appeals ruling is of first impression holding a fraternity house is a multi-unit dwelling. (State’s Petition at pg. 4 [item 2]). The structure was used as a fraternity house, but many structures with multiple individuals residing within may or may not contain multiple individual dwelling units. If Patterson’s room was an individual living space entitled to Fourth Amendment protection, it matters not whether the larger structure was a fraternity house, dorm, apartment complex, or a sober living facility. *See, e.g., Morales v. State*, 640 S.W.2d 273, 275 (Tex. Crim. App. 1982) (holding duplex unit required particular description).

residents are issued security key cards limiting entrance to the structures where their individual “home away from home” are located. It also disregards the commonality of residents in student housing situations – honor dorms, or housing allocated to specific majors and student activities – Texas A&M Corp of Cadets – for example.

Patterson testified on Fourth Amendment standing to his individual unit without evidentiary dispute. The testimony was his individual unit, not the larger fraternity house structure, was his home (2 RR 19) and he had the right to exclude individuals from his Unit 216. (2 RR 12-13). Other residents also had the right to exclude him from their individual units. (2 RR 27). Unit 216 had a lock on the door (2 RR 13) that Patterson used for privacy. (Id). Patterson testified he paid rent for the unit. (2 RR 12; DX 1). Patterson’s written lease did not list his unit number. However, the information secured by Investigator Garrett from the fraternity house manager, and contained in the warrant affidavit, was stand-alone evidence that when the warrant affidavit and warrant was presented, Patterson’s lease was for that individual unit.

- B. The Court of Appeals Memorandum Opinion relied on long standing law that incorporation by reference does not cure substantive warrant defects when the affiant knows of the privacy interest in the individual unit

The State’s Ground One for Review concedes by definition the search warrant sought and issued in this case was defective as overbroad. The State claimed for the first time at rehearing, and now in this Court, that language in the affidavit

incorporating it into the warrant cured the defective general description. The State relies for support on the following cases: *Rios v. State*, 901 S.W.2d 704 (Tex. App. – San Antonio 1995, no pet.), *Green v. State*, 799 S.W.2d 756, 757 (Tex. Crim. App. 1990), and *Phenix v. State*, 488 S.W.2d 759 (Tex. Crim. App. 1972). A reading of these three cases support the Court of Appeals analysis that the affidavit’s incorporation by reference did not cure the substantive, overbroad defect in the warrant.

In *Green* the search warrant was signed on March 20, 1987 and the return dated March 25, 1987. 799 S.W.2d 756, 757 (Tex. Crim. App. 1990). The Court of Criminal Appeals wrote this facially violated statutory requirements that the warrant be executed within three days. *Id.* At the hearing on the motion to suppress the trial court made explicit finding the warrant and affidavit should be read together, finding that the information supporting the warrant was received by the magistrate on March 25, 1987 and not March 20, 1987. *Id.* at 759-60.

The Court of Criminal Appeals determined it was proper for the trial court to go behind the warrant, ostensibly to determine whether the defect in dates was a technical error, citing *Phenix v. State*, writing, “When the question on appeal relates to descriptive facts supporting the probable cause determination, a reviewing court may logically look behind the warrant to the supporting affidavit.” *Id.* at 760. (citing *Phenix v. State*, 488 S.W.2d 759 (Tex. Crim. App. 1972)). This sentence must be read in the context of the technical error existing in the warrants issued in those cases.

In *Phenix*, the Court of Criminal Appeals reviewed a warrant regarding a search of a garage apartment where marijuana was found. 488 S.W.2d 759, 761. The search issue in *Phenix* was the affidavit was insufficient because it “failed to allege that contraband narcotics were being concealed at the described place, but only alleged that certain ‘personal property’ was being there concealed.” *Id.* at 764.

The affidavit upon which the search warrant issued, and which was both attached thereto and incorporated by reference therein, alleged that the appellant was in possession of ‘personal property, to-wit: marihuana.’ Possession of Marihuana is proscribed. The characterization of the marihuana as ‘personal property,’ whether technically correct or not, is immaterial and certainly does not render the affidavit fatally defective.

Id. at 764.

Thus, *Green* and *Phenix* did *not* address the issue as presented in the State’s Petition: a general warrant describing a larger structure containing what the presenting officer knew at the time of presentation were individual dwelling spaces. In *Green* the warrant contained a technical defect as to date, not a defective description of the premises sought to be searched. The warrant in *Phenix* particularly described the premises sought to be searched. Neither situation is applicable to the substantive, defective general description of the dwelling to be searched in this case.

A reading of *Rios v. State*, 901 S.W.2d 704 (Tex. App. – San Antonio 1995, no pet.), relied on by the State in their Petition makes this plain, and how that case, *Green* and *Phenix* are inapplicable to the defects in the search warrant and supporting affidavit in this case. In *Rios*, the warrant accurately described the place to be searched

– a house – but commanded not a search of that house, but a “suspected vehicle described at that location.” *Id.* 705-706.

The *Rios* Court cited and discussed *Green* and *Phenix*. Significant for the issue raised by the State here, the *Rios* Court recognized the *Phenix* Court did not provide any details regarding the affidavit or warrant: “The *Phenix* court did not give any details regarding the affidavit or warrant, therefore we are unable to tell if the description in the warrant was just vague or incorrect as it is here.” *Id.* at 707. The Court of Appeals in *Rios* cited *Green* for the proposition that “*Technical* discrepancies as to dates and times do not automatically invalidate a search warrant.” *Id.* (citing *Green* at 759) (emphasis added).

The *Rios* Court’s analysis also relied on the good faith exception to the warrant requirement recognized in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984) and Art. 38.23(b), TEX. CODE CRIM. P. In relying on the good faith exception, the *Rios* Court decided the defect in language was technical and the correct description of the dwelling sought in the warrant and affidavit was relied upon within the requirements of the good faith exception:

Based upon *Phenix*, *Green*, *Leon* and Art. 38.23, all *supra*, we hold that when a search warrant contains a typographical error in the description of the place to be searched and the warrant incorporates the supporting affidavit which contains a correct description of the place to be searched, the trial court does not err in refusing to suppress the evidence seized during the search. We fail to see any Fourth Amendment benefit to be derived from suppressing this evidence.

Rios at 708 (emphasis added); *See also Bridges v. State*, 574 S.W.2d 560 (Tex. Crim. App.

1978) (affirming denial of suppression motion where warrant correctly described street address, color, and type of construction of single family dwelling, but mistakenly omitted town where address was located when same officers who presented the supporting affidavit executed the issued warrant).

This is the reason why the warrant affiant's identification of Unit 216 and the recitation it belonged to Patterson in the supporting affidavit does not cure the general description warrant defect. The affiant sought, without mistake what he meant to secure: a warrant for the entire described structure. Though the affidavit attests the unit belonged to Patterson under a written lease, the affiant sought the overbroad, general warrant.

C. The Court of Appeals Memorandum Opinion recognized the warrant affiant objectively knew of the substantive defect in the warrant and the good faith exception does not apply

The substantive nature of the defect in the warrant and the supporting affidavit in this case go to the heart of not just the particularity requirement, but the good faith exception. In the most recent case decided by this Court involving the good faith exception, *Wheeler v. State*, 616 S.W.3d 858 (Tex. Crim. App. 2021), the Court of Criminal Appeals recognized the oath requirement of a supporting affidavit is critical under Texas law. The particularity requirement is just as critical.

In *Wheeler* this Court decided, using an objective reasonable officer standard, “no objectively reasonable officer would have believed the warrant here [supported by the unsworn affidavit] was valid.” *Id.* (citing *McClintock v. State*, 541 S.W.3d 63, 73-74

(Tex. Crim. App. 2017) (“*McClintock* thus solidified that it the objective reasonableness of the officer’s conduct based on the facts and circumstances he knows at the time, that dictates whether the good faith exception applies.”).

In this case, the affiant *objectively* knew the structure contained twenty-five individually leased units rather than a structure containing twenty-five bedrooms. As to the good faith exception, a reasonable investigator with the affiant’s extensive narcotics investigation and training experience, (SX 1 [affidavit pg.4/6 “Background of Affiant”]) (Appendix One), given the facts he knew at the time the affidavit and warrant was presented, would or should have known the description of the premises searched was overbroad. *See, e.g., Wheeler, supra; McClintock, supra.*

The Court of Appeals memorandum decision recognized the logical inconsistency of the State’s argument. The warrant affidavit lists an itemization of Rooms “*belonging*” to a corresponding “Suspected Party.” (SX 1 [affidavit pg. 5/6]) (Appendix One). Thus, the specificity in the affidavit the State relies upon to cure the defect also shows the affiant knew these units were individual dwelling units. Under the State’s legal argument, an overbroad, general warrant is cured by the very knowledge the structure contains individual units that require specific, particular warrant description. This renders the particularity requirement in multi-unit settings meaningless. Under the State’s Grounds One and Three contention the very knowledge that particularity is required cures the warrant defect. This is a legally absurd result.

D. The Court of Appeals Memorandum Opinion recognized long standing United States Supreme Court precedent that a defective general warrant is not cured when the warrant affiant knows or should have known of the general description defect

Supreme Court authority supports the Court of Appeals analysis. In *Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013 (1987), the Supreme Court was confronted with a search warrant that authorized the search of a described third floor apartment. When law enforcement arrived, they searched not just the apartment of the named suspect described in the warrant, but the entirety of the third floor. The Court framed the defect in the warrant, the knowledge of law enforcement of the nature of the third floor apartment at the time they sought the warrant, and the issue presented to them as follows:

When the police applied for the warrant and when they conducted the search pursuant to the warrant, they reasonably believed that there was only one apartment on the premises described in the warrant. [Before] the officers executing the warrant became aware that they were in a separate apartment occupied by [the defendant], they had discovered the contraband that provided the basis for respondent's conviction. [The] question presented is whether the seizure of that contraband was prohibited by the Fourth Amendment.

Id. at 80.

The Supreme Court concluded the description of the place to be searched was overbroad because it was based on the mistaken belief there was only one apartment on the third floor of the building. The Court decided this factual mistake did not invalidate the warrant because of what law enforcement *could not* have known when the warrant was presented: the third floor contained not just one, but two apartments:

Plainly, if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's apartment from the scope of the requested warrant. But we must judge the constitutionality of their conduct in light of the information available to them at the time they acted. Those items of evidence that emerge after the warrant is issued have no bearing on whether or not a warrant was validly issued. Just as the discovery of contraband cannot validate a warrant invalid when issued, so is it equally clear that the discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant. The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate.

Id. at 85 (emphasis added).

In this case, consistent with *Garrison*, the warrant affiant knew at the time he presented the affidavit and warrant the premises description he sought by warrant was overbroad and defective. Going behind the warrant and affidavit, as *Garrison*, *Phenix*, and *Green* so hold is proper, at the suppression hearing Garrett testified his investigation included his interview with the fraternity house manager, Aaron Springs. (2 RR 221). Garrett testified Springs was able to identify all the individuals leasing rooms at the house (specific units “belonging” to specific individuals), as well their unit numbers. (2 RR 222).

Warrant affiant testified this information led to what appears in the warrant affidavit that “[t]here were twenty-five individual bedrooms which *are rented by the said suspected parties.*” (SX 1 [affidavit pg.4/6]) (emphasis added). As significant, the affiant was questioned about this specific sentence at the suppression hearing. He testified he

knew, based on the information received from house manager Springs, the living units were not bedrooms inside a larger structure, but individually leased units:

[Question by defense counsel]: Can you look at page four of your affidavit under Synopsis of Investigation? Do you see where you told [Magistrate] that there were, 'Multiple common areas, such as, entertainment rooms, meetings rooms, kitchens, and bathrooms.'? Do you see that on the last paragraph on page 4 of your affidavit at the top of the paragraph?

[Answer by Garrett]: Yes, sir.

[Question]: But do you also see where you recognized at that time that in addition to these common areas, there were 25 individual bedrooms which are rented by the said suspected parties. Do you recall telling the magistrate that?

[Answer]: Yes.

[Question]: Because that was your belief at the time?

[Answer]: Yes.

[Question]: Not that this would be for all like bedrooms of a house, but these were rented rooms by different individuals; correct?

[Answer]: Correct.

(2 RR 237).

The purpose of the particularity requirement is to prevent the kind of general search pursued by law enforcement in this case. By limiting authorization to search the specific areas described and that the warrant was intended to authorize, the requirement ensures the search will be tailored to its justifications and will not take on the character of the wide-ranging exploratory search.

The Court of Appeals Memorandum Opinion recognized and applied the reasons for the Constitutional need for particularity of descriptions of dwelling spaces sought to be searched by warrant.

The reasons for the requirement for particularity include: 1) ensuring that the officer searches the right place; 2) confirming that probable cause is, in fact, established for the place described in the warrant; 3) limiting the officer's discretion and narrowing the scope of his search; 4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and 5) informing the owner of the officer's authority to search that specific location. *Long v. State*, 132 S.W.3d 443, 447 (Tex. Crim. App. 2004) (citing *Berger v. New York*, 388 U.S. 41, 58, 87 S.Ct. 1873 (1967)).

In this case, the search warrant gave authority to search all twenty-five units and common areas of the larger structure. The description did not limit or narrow the scope of the search to the ten units that resulted from the three warrantless entries into the private dwelling spaces before the search warrant was sought seven hours later. The itemization in the supporting affidavit resulting from the three warrantless searches served not to narrow the premises asked by either the warrant or affidavit to be searched – the itemization went to probable cause to search the *entirety* of the described structure.

The warrant affiant testified at the suppression hearing that he did not participate in executing the warrant. (2 RR 230) (“I would not have actively

participated in the searching of any of the residence. Essentially, we have other people that facilitate the search.”). The boilerplate language incorporating the affidavit into the warrant is not evidence the affidavit was attached to the warrant that was served. Common practice among law enforcement is that it is the issued and signed warrant that is served and returned. Law enforcement officers actually executing the warrant were left with the general description in the warrant itself.

In sum, Patterson had a Fourth Amendment privacy and trespass interest in his individual leased unit. The seven-hour investigation preceding the warrant affiant’s seeking a warrant for the larger structure revealed the twenty-five units were individually leased. Patterson’s testimony at the hearing established standing in his unit. The warrant affiant knew objectively of Patterson’s privacy interest and his lease of that unit inside the larger structure when presenting the warrant. The Court of Appeals decision was based on long standing law recognizing these principles.

Reply to State’s Second Ground for Review

The Court of Appeals Memorandum Opinion recognized and followed long standing standards of review for Motions to Suppress, deferring to historical facts supporting the Trial Court ruling, and reviewed *de novo* the application of those uncontroverted facts such that implied consent was not an issue that needed to be addressed

When findings of fact are not entered, reviewing courts view the evidence in the light most favorable to the judge's ruling and assume the judge made implicit findings of fact that support the ruling as long as the record supports those findings. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). Further, a judge's

application of the law to the facts is reviewed *de novo*. *Id.* A reviewing court should uphold a trial judge's ruling if the record reasonably supports that ruling and is correct on any theory of law applicable to the case. *Id.* at 447-48.

The Court of Appeals decided, based on long standing law, that Patterson's individual unit was the space Patterson had standing to assert privacy and trespass interest. This renders inapplicable the State's underlying premise in Ground Two. (State's Petition, pg. 15: "If the Sigma Nu house was a *single residence*...then police were lawfully in position to observe illegal narcotics and other contraband which were pervasive throughout [the] house³ and the search warrant for the house was valid." (emphasis added)). The Court of Appeals Memorandum Opinion did not address *Brown v. State*, 856 S.W.2d 177 (Tex. Crim. App. 1993) and *Johnson v. State*, 226 S.W.3d 439 (Tex. Crim. App. 2007) because they are inapplicable to this case.

Brown and *Johnson* are legally inapposite if the Court of Appeals legal analysis that Patterson's Fourth Amendment standing was in his individual unit rather than the larger structure. Patterson never gave consent to search his individual dwelling unit, and the State's theory requires imputation of that consent to an unknown third party.

In *Johnson* and *Brown* homeowners invited police into their Fourth Amendment protected space – both single family dwellings – when reporting the occurrence of a

³ The search warrant affidavit reflects that during the multiple warrantless searches of the larger structure, contraband was found in ten of the twenty-five individual units.

crime. The defendant in *Brown* told police his wife was dead in the garage. *Brown* at 179. The homeowner in *Johnson* told police she killed her husband. *Johnson* at 440.

The State provides no legal authority in their Petition that an unidentified individual requesting emergency assistance to a common area within a larger structure with multiple individual dwelling units has the authority to give consent, express or implied, to search a separate, Fourth Amendment protected living space. Instead, the authority for consent to search a single family dwelling is dependent on the authority possessed by the consenting party over the space that Fourth Amendment privacy and trespass interests exist.

In sum, because of the privacy interest Patterson had in his individual unit, the implied consent arguments in the State's Petition are not applicable. Patterson did not consent to a search of his dwelling unit, and the unknown individual who called for emergency assistance for a common area of the first floor of the larger structure could not have provided the consent argued by the State. The Court of Appeals Memorandum Opinion recognized these long standing rules in their analysis.

PRAYER FOR RELIEF

The Court of Criminal Appeals should refuse the State's Petition for Discretionary Review.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

This Reply complies with TEX. R. APP. P. 9.4(i)(2)(D) in that it contains 4,233 words, in Microsoft Word 2019, Garamond, 14 point.

 /s/ LANE D. THIBODEAUX
LANE D. THIBODEAUX

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Reply to State's PDR has been delivered *via* electronic filing on this the 11th day of June, 2021 to the following:

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APPENDIX 1

WARRANT & AFFIDAVIT

SAMUEL CRAWFORD PATTERSON

V.

THE STATE OF TEXAS

PD-0322-21

**IN THE
COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

S-415-16

Search Warrant
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THE STATE OF TEXAS

§

COUNTY OF BRAZOS

§

SEARCH WARRANT

The State of Texas: To the Sheriff or any Peace Officer of Brazos County, Texas, or any Peace Officer of the State of Texas, or Special Investigator of the State of Texas or any Special Investigator of the United States:

Whereas, the affiant, whose name appears on the affidavit attached hereto is a peace officer or special investigator under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me (which said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant), and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he expresses herein and establishes the existence of proper grounds for issuance of this Warrant;

Now, therefore, you are commanded to enter the suspected place described in said affidavit, to-wit, the following:

A multi-story, multi-wing residence building located at 550 Fraternity Row, College Station, Brazos County, Texas. The residence is known as the Sigma Nu Fraternity house and sits on the northeast corner of the Fraternity Row and Deacon Drive intersection. The exterior consists of light beige siding, and light beige colored brick. The main wing consists of a two story structure, with an open balcony with a wrought iron railing running the full length of the front of the building. There is a doorway located in the center. There are two large sized, multi-paned windows to both the right and left side of this doorway. Each window is further described as having dark brown shutters to either side. The lower level holds the main entrance, also centered in the building, with two large sized, multi-paned windows to both the right and left side of this doorway. The front of the residence building has six, individual, brick pillars which reach from the ground to the top of the second story. These pillars are made of beige colored brick. The two center most pillars are adorned with lighting sconces which are positioned near the center of the pillar, height wise. Centered on the second level and attached to the wrought iron railing are the two large, Greek letters for Sigma and Nu, which are dark brown in color surrounded by a white outline. Directly below these letters, the numbers "550" are affixed. The main entrance into the residence building faces towards the southwest and consists of two wooden doors which open outwards. The doors are painted maroon in color; with the right side door having a brown metal, latch style door knob with an attached electronic key pad positioned on the left side of the door. Above the door latch is a brown metal keyhole for a deadbolt style locking mechanism. The attached wing is also two storied and made up of beige colored brick. It is positioned on the northwest side of the main building. The southwest facing side of the attached wing holds four individual windows, two on each level, which consist of multi-paned windows and dark brown colored shutters to each side. Said Suspected Place also includes locations outside of

the residence, such as garages, outbuildings, boxes, and other vehicles parked within the curtilage of Said Suspected Place.

SAID SUSPECTED PLACE IS IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING NAMED PARTIES (HEREAFTER CALLED "SUSPECTED PARTY" WHETHER ONE OR MORE) TO-WIT:

John David Cane, W/M, 7/14/1997	(Said Suspected Party #1)
Jackson Kyle Majewski, W/M, 6/4/1997	(Said Suspected Party #2)
Anton Gridnev, W/M, 8/19/1997	(Said Suspected Party #3)
Ty K. Robertson, W/M, 8/10/1995	(Said Suspected Party #4)
Nathan Andrew Taylor, W/M, 7/19/1995	(Said Suspected Party #5)
Brandon Little, Unknown Race/D.O.B.	(Said Suspected Party #6)
Zachary Kelsoe Farmer, W/M, 2/26/1996	(Said Suspected Party #7)
Aaron Douglas Spring, W/M, 5/30/1996	(Said Suspected Party #8)
Michael Steele Frymire, W/M, 8/13/1996	(Said Suspected Party #9)
Adam James Patrick, W/M, 2/14/1997	(Said Suspected Party #10)
William Pfeiffer, W/M, 5/14/1996	(Said Suspected Party #11)
Justin Wu, A/M, 6/9/1995	(Said Suspected Party #12)
Matthieu Durst, Unknown Race/D.O.B.	(Said Suspected Party #13)
Maxwell Arthur Gollomp, W/M, 10/22/1996	(Said Suspected Party #14)
Benjamin Jean Castagno, W/M, 12/27/1994	(Said Suspected Party #15)
Christian Andrew Sandford, W/M, 9/8/1997	(Said Suspected Party #16)
Benjamin Allan Ray, W/M, 5/31/1995	(Said Suspected Party #17)
Brian Ogden, Unknown Race/D.O.B.	(Said Suspected Party #18)
Alec Statler, Unknown Race/D.O.B.	(Said Suspected Party #19)
Andrew Davis Hyman, Unknown Race/D.O.B.	(Said Suspected Party #20)
Cole Chase Teel-Jongebloed, W/M, 3/12/1996	(Said Suspected Party #21)
Samuel Crawford Patterson, W/M, 7/12/1995	(Said Suspected Party #22)
Thomas James Emeterio, W/M, 8/10/1995	(Said Suspected Party #23)

YOU ARE COMMANDED TO SEARCH FOR AND SEIZE THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO-WIT:

- A. A usable quantity of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)) and items commonly associated with the use, packaging and sales of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)), including scales, weighing devices, and measuring devices, packaging materials including paper bindles, glass vials, and plastic baggies, foils, sifters, filters, screens and cutting agents. Additionally, paraphernalia such as glass pipes and bongs, straws, syringes.
- B. Documents of sales of controlled substances consisting of buy/sales lists; record of personal and business transactions as relates to the purchase and sales of marijuana
- C. Financial records to facilitate the investigation of the laundering of illicitly obtained monies and/or other forms of assets acquired through criminal activity and subsequent evasion of governmental

taxes, which include, but are not limited to, federal and state tax returns, employment papers, banking records and pass books, account information, canceled checks, deposit records, income and expenditures records, property acquisition records, money market accounts and/or similar accounts, records of stocks and/or bonds purchased or exchanged; credit card records; records reflecting the rental of safe deposit boxes; safe deposit box keys; records reflecting vehicles, aircraft or vessels owned, purchased, sold or leased; and negotiable instruments;

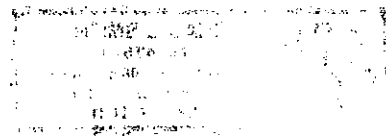
- D. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of above named said suspected party or parties;
- E. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of individuals that are present at said suspected place who are not named in the warrant yet probable cause can be established upon service of warrant;
- F. Electronic storage devices capable of displaying images or documents concerning drug trafficking or use and any images or documents contained therein, i.e. computer hardware, software and data including, but not limited to central processing units (CPU's), hard disks, hard disk drives, floppy disk drives, tape drives, CD-ROM drives, display screens, keyboards, printers, modems, personal digital assistants (PDA's), scanning devices, digital cameras / camcorders / VCR's, and other image capturing / reproducing devices, magnetic tapes, cassette tapes, and floppy disks found together or separately from one another, written documentation, whether typed or hand written, including, but not limited to, computer manuals and instructions for the use of any computers and their accessories as well as documentation containing passwords. Officers shall be allowed to remove all computer related items for later exam
- G. U.S. currency, negotiable instruments, securities, and other items of value from the illicit sales of narcotics which, are forfeit able under applicable statutes and if found the same or any part thereof, to hold such property in our possession under applicable statutes, or to release the property to the appropriate agency for State or Federal forfeiture proceedings;
- H. Articles of indicia tending to establish the identity of persons in control of the premises including, but not limited to: keys, mail, bills, utility receipts, rental receipts, and other personal property such as clothing
- I. The forensic analysis of the above-described computer(s) hard drive, cellular phone(s), or portable communication devices conducted within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone

Further, you are ORDERED, pursuant to the provisions of Texas Code of Criminal Procedure Article 18.10, to retain custody of any property seized pursuant to this Warrant, until further order of this

Court or until any other court of appropriate jurisdiction shall otherwise direct the manner of safekeeping of said property. The Court grants you leave and authority to remove such seized property from this county, if and only if such removal is necessary for the safekeeping of such seized property by you, or if such removal is otherwise authorized by the provisions of Article 18.10. You are further ORDERED to give notice to this Court, as part of the inventory to be filed subsequent to the execution of the Warrant, and as required by Article 18.10 of the place where the property seized hereunder is kept, stored and held.

HEREIN FAIL NOT, you shall execute this Warrant within three days, exclusive of the day of issuance and exclusive of the day of its execution, and bring return thereon, showing how you have executed the same.

ISSUED this the 20 day of August, A.D., 2016, at 11:30 o'clock A. M., to certify which witnesses my hand this day.



Ed Spillane
Judge, BRAZOS COUNTY
Ed Spillane
COLLEGE STATION MUNICIPAL COURT

THE STATE OF TEXAS

§

COUNTY OF BRAZOS

§

AFFIDAVIT FOR SEARCH WARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED THE AFFIANT HEREIN, A PEACE OFFICER OR SPECIAL INVESTIGATOR UNDER THE LAWS OF TEXAS, WHO, BEING DULY SWORN, ON OATH MADE THE FOLLOWING STATEMENTS:

My name is Investigator J. Reilly Garrett with the College Station Police Department, and, as such, I am a peace officer according to the laws of the State of Texas.

I have reason to believe and do believe that evidence and contraband in violation of the laws of the State of Texas, specifically Texas Health and Safety Code Section 481.115 (Possession of Substance Penalty Group 1); and Section 481.121 (Possession of Marijuana) is contained in suspected place and property described below; and that evidence tending to show that the suspected party listed below committed offenses in violation of Texas Health and Safety Code Section 481.115 (Possession of Substance Penalty Group 1); and Section 481.121 (Possession of Marijuana) is contained in the suspected place/property.

THERE IS IN BRAZOS COUNTY, TEXAS A SUSPECTED PLACE DESCRIBED AND LOCATED AS FOLLOWS:

A multi-story, multi-wing residence building located at 550 Fraternity Row, College Station, Brazos County, Texas. The residence is known as the Sigma Nu Fraternity house and sits on the northeast corner of the Fraternity Row and Deacon Drive intersection. The exterior consists of light beige siding, and light beige colored brick. The main wing consists of a two story structure, with an open balcony with a wrought iron railing running the full length of the front of the building. There is a doorway located in the center. There are two large sized, multi-paned windows to both the right and left side of this doorway. Each window is further described as having dark brown shutters to either side. The lower level holds the main entrance, also centered in the building, with two large sized, multi-paned windows to both the right and left side of this doorway. The front of the residence building has six, individual, brick pillars which reach from the ground to the top of the second story. These pillars are made of beige colored brick. The two center most pillars are adorned with lighting sconces which are positioned near the center of the pillar, height wise. Centered on the second level and attached to the wrought iron railing are the two large, Greek letters for Sigma and Nu, which are dark brown in color surrounded by a white outline. Directly below these letters, the numbers "550" are affixed. The main entrance into the residence building faces towards the southwest and consists of two wooden doors which open outwards. The doors are painted maroon in color; with the right side door having a brown metal, latch style door knob with an attached electronic key pad positioned on the left side of the door. Above the door latch is a brown metal keyhole for a deadbolt style locking mechanism. The attached wing is also two storied and made up of beige colored brick. It is positioned on the northwest side of the main building. The southwest facing side of the attached wing holds four individual windows, two on each level, which consist of multi-paned windows and dark brown colored shutters to each side. Said Suspected Place also includes locations outside of the residence, such as garages, outbuildings, boxes, and other vehicles parked within the curtilage of Said Suspected Place.

SAID SUSPECTED PLACE IS IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING NAMED PARTIES (HEREAFTER CALLED "SUSPECTED PARTY" WHETHER ONE OR MORE) TO-WIT:

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Jackson Kyle Majewski, W/M, 6/4/1997	(Said Suspected Party #2)
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Ty K. Robertson, W/M, 8/10/1995	(Said Suspected Party #4)
Nathan Andrew Taylor, W/M, 7/19/1995	(Said Suspected Party #5)
Brandon Little, Unknown Race/D.O.B.	(Said Suspected Party #6)
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Aaron Douglas Spring, W/M, 5/30/1996	(Said Suspected Party #8)
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William Pfeiffer, W/M, 5/14/1996	(Said Suspected Party #11)
Justin Wu, A/M, 6/9/1995	(Said Suspected Party #12)
Matthew Durst, Unknown Race/D.O.B.	(Said Suspected Party #13)
Maxwell Arthur Gollomp, W/M, 10/22/1996	(Said Suspected Party #14)
Benjamin Jean Castagno, W/M, 12/27/1994	(Said Suspected Party #15)
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Cole Chase Teel-Jongebloed, W/M, 3/12/1996	(Said Suspected Party #21)
Samuel Crawford Patterson, W/M, 7/12/1995	(Said Suspected Party #22)
Thomas James Emeterio, W/M, 8/10/1995	(Said Suspected Party #23)

IT IS THE BELIEF OF AFFIANT, AND AFFIANT HEREBY CHARGES AND ACCUSES THAT SAID SUSPECTED PARTY HAS POSSESSION OF AND IS CONCEALING AT SAID SUSPECTED PLACE IN VIOLATION OF THE LAWS OF TEXAS OR ITEMS WHICH MAY BE EVIDENCE OF A CRIME, THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO-WIT:

- A. A usable quantity of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA) and items commonly associated with the use, packaging and sales of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA), including scales, weighing devices, and measuring devices, packaging materials including paper bindles, glass vials, and plastic baggies, foils, sifters, filters, screens and cutting agents. Additionally, paraphernalia such as glass pipes and bongs, straws, syringes.
- B. Documents of sales of controlled substances consisting of buy/sales lists; record of personal and business transactions as relates to the purchase and sales of marijuana
- C. Financial records to facilitate the investigation of the laundering of illicitly obtained monies and/or other forms of assets acquired through criminal activity and subsequent evasion of governmental taxes, which include, but are not limited to, federal and state tax returns, employment papers,

banking records and pass books, account information, canceled checks, deposit records, income and expenditures records, property acquisition records, money market accounts and/or similar accounts, records of stocks and/or bonds purchased or exchanged; credit card records; records reflecting the rental of safe deposit boxes; safe deposit box keys; records reflecting vehicles, aircraft or vessels owned, purchased, sold or leased; and negotiable instruments;

- D. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of above named said suspected party or parties;
- E. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of individuals that are present at said suspected place who are not named in the warrant yet probable cause can be established upon service of warrant;
- F. Electronic storage devices capable of displaying images or documents concerning drug trafficking or use and any images or documents contained therein, i.e. computer hardware, software and data including, but not limited to central processing units (CPU's), hard disks, hard disk drives, floppy disk drives, tape drives, CD-ROM drives, display screens, keyboards, printers, modems, personal digital assistants (PDA's), scanning devices, digital cameras / camcorders / VCR's, and other image capturing / reproducing devices, magnetic tapes, cassette tapes, and floppy disks found together or separately from one another, written documentation, whether typed or hand written, including, but not limited to, computer manuals and instructions for the use of any computers and their accessories as well as documentation containing passwords. Officers shall be allowed to remove all computer related items for later exam
- G. U.S. currency, negotiable instruments, securities, and other items of value from the illicit sales of narcotics which, are forfeit able under applicable statues and if found the same or any part thereof, to hold such property in our possession under applicable statues, or to release the property to the appropriate agency for State or Federal forfeiture proceedings;
- H. Articles of indicia tending to establish the identity of persons in control of the premises including, but not limited to: keys, mail, bills, utility receipts, rental receipts, and other personal property such as clothing
- I. The forensic analysis of the above-described computer(s) hard drive, cellular phone(s), or portable communication devices conducted within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone

AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO-WIT:

BACKGROUND OF AFFIANT

Affiant is a peace officer of the State of Texas and has been a peace officer for over 5 years (June 2011) and am presently employed by the College Station Police Department, as an Investigator in the Special Investigations Unit (SIU), a part of the Criminal Investigations Division. Affiant has received training in Basic Narcotics Investigations from the Regional Counterdrug Training Academy, as well as having additional experience and training in the recognition of marijuana, heroin, cocaine and MDMA by sight and smell. Affiant has participated in numerous street level narcotics investigations and currently holds an Intermediate Peace Officer certificate. Affiant has previously served narcotics search warrants and has participated in the service of numerous other narcotics search warrants. Affiant served on the Patrol Division from 2011 until 2014, where he was a Field Training Officer and SWAT Operator. In 2014 Affiant began serving in the Criminal Investigations Division. Affiant is currently assigned to the Special Investigations Unit within the Criminal Investigations Division.

SYNOPSIS OF INVESTIGATION

On 8/20/16, at approximately 0441 hours, an emergency call was transferred to the College Station Police Department from the Texas A&M University Police Department. The caller advised that she was currently located at Said Suspected Place and believed that Said Suspected Party #3 was suffering from an overdose. The caller reported that she had been advised that Said Suspected Party #3 had been taking some type of opioid. The College Station Fire and Police Departments responded and found Said Suspected Party #3 to be on the ground near the front doorway to Said Suspected Place. Emergency medical treatment was provided and Said Suspected Party #3 was transported to the College Station Medical Center where he was later pronounced deceased.

The on-scene investigation revealed Said Suspected Place to be operated by the Sigma Nu Fraternity, and consisting of multiple common areas such as entertainment rooms, meeting rooms, kitchen, bathrooms, and 25 individual bedrooms which are rented by the Said Suspected Parties. On this date, the Fraternity hosted a party which was attended by a large number of people; both residents and non-residents. It was determined that at approximately 0410 hours, the College Station Medical Center received a call inquiring as to what actions should be taken when someone has overdosed. A second call was received approximately 15 minutes later, again inquiring as to what should be done and further stating that they did not want the Police involved due to the "substances" that would be found at the Said Suspected Place. The emergency call to EMS and Police was then received at approximately 0441 hours; with the first unit arriving at 0448 hours. Witnesses interviewed on scene reported that Said Suspected Party #3 had been celebrating his birthday (8/19/16) and was known to have ingested an unknown quantity of: Alprazolam, Hydrocodone, MDMA, and possibly Heroin, within the hours preceding his death. He was found unconscious and unresponsive by Said Suspected Party #22 and dragged from his bedroom on the first floor, to the main entrance of the residence where he was found by first responders.

During the initial response by the Police arriving on scene, a protective sweep was conducted of the entirety of the residence in an attempt to locate any additional victims, witnesses. During this sweep, the following items were observed in plain view:

1. Down stairs theater room – coffee table: a zip lock style sandwich bag, lighter, small metal screen commonly used as paraphernalia when smoking marijuana or THC concentrates, and a second plastic bag with a small amount of what appeared to be THC concentrate on it.
2. Room #104 belonging to Said Suspected Party #3 (Decedent) – desktop: a drinking straw which had been cut into three sections, a white powdery substance consistent with the appearance of cocaine, a key card with a white powdery substance on it, a prescription pill bottle for Vyvanse in the name of Said Suspected Party #22.
3. Room #105 belonging to Said Suspected Party #4 – nightstand near bed: small glass pipe with burned marijuana residue.
4. Room #213 belonging to Said Suspected Party #19 – desktop: small circular mirror with cut straws, crushed blue colored powder, two small plastic baggies with white colored residue. Prescription pill bottle with label removed and containing marijuana was found on an adjacent shelf.
5. Room #216 belonging to Said Suspected Party #22 – coffee table: two small plastic baggies with white colored residue, white powdery substance arranged in a line.
6. Room #214 belonging to Said Suspected Party #20 – coffee table: metal grinder with marijuana residue.
7. Room #210 belonging to Said Suspected Party #16 – desktop: prescription bottle with marijuana residue.
8. Room #207 belonging to Said Suspected Party #13 – desktop: glass bong.
9. Room #202 belonging to Said Suspected Party #8 – closet shelf: glass jar with mushrooms consistent in appearance with Psilocybin mushrooms.
10. Room #203 belonging to Said Suspected Party #9 – nightstand: glass bong and metal grinder. Nearby desktop: marijuana residue.
11. Room #208 belonging to Said Suspected Party #14 – dresser top: glass pipe with burned marijuana, metal grinder.

REQUEST TO SEARCH FOR DIGITAL EVIDENCE

Based on Affiant's experience, narcotics use and sales are an ongoing criminal venture. Based on Affiant's experience and training, Affiant knows that items of evidence of such ongoing ventures will be kept in a person's residence. Such evidence can include items like ledgers and phone messages which are generally maintained for extended periods of time.

Based on Affiant's training and experience, in order to completely and accurately retrieve data maintained in computer or cell phone hardware or on computer or cell phone software, to ensure accuracy and completeness of such data, and to prevent the loss of the data either from accidental or programmed destruction, it is often necessary that computer hard drives or cell phones be copied and examined by a qualified computer specialist.

Affiant is therefore requesting that a forensic examination of any computer, cellular telephone and computer related media found at the above locations be conducted for evidence of criminal activity, specifically related to the planning and commission of this offense.

If authorized to search the above-described computer(s) hard drive or cellular phone(s), the forensic analyst will conduct the search within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone.

Affiant knows, based on training and experience, that computers store the names of the people the operating system is registered to, as well as the name of the person to whom the programs are registered. Written documents are also often found that bear the name of the person that wrote them.

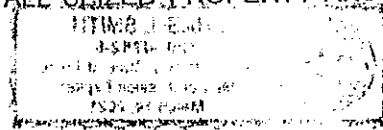
The above information is used for indicia of ownership to establish the identity of person(s) in control of the computer(s) or cellular phone(s).

REQUEST TO SEARCH CURTILAGE FOR EVIDENCE

Based on the Affiant's experience in conducting narcotic investigations, he found it is common for individuals to conceal the illegal substances in locations outside of the residence, such as garages, outbuildings, boxes, vehicles parked within the curtilage of Said Suspected Place so as to avoid detection by law enforcement. Affiant wishes to include these locations in the search warrant.

Affiant knows through his experience that it is common for places where narcotics are being sold to be populated by buyers and sellers who will be in possession of narcotics on their person.

WHEREFORE, INVESTIGATOR J. REILLY GARRETT ASKS FOR ISSUANCE OF A WARRANT THAT WILL AUTHORIZE THE SEARCH OF SAID SUSPECTED PLACE FOR SAID PERSONAL PROPERTY AND SEIZE THE SAME AND TO TAKE CUSTODY OF ALL SEIZED PROPERTY AND SAFEKEEP SUCH PROPERTY AS PROVIDED BY STATUTE.



J. Reilly Garrett #844 J. Reilly Garrett
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE 20th DAY OF August, A.D., 20 16.

Ed Spillane
Judge, Signature

Ed Spillane
Judge, Print

College Station Municipal Court
Court, BRAZOS COUNTY

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 54323961

Status as of 6/14/2021 8:09 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule	24031632	information@spa.texas.gov	6/11/2021 9:36:31 AM	SENT

Associated Case Party: Brazos County District Attorney's Office

Name	BarNumber	Email	TimestampSubmitted	Status
Ryan Calvert		rcalvert@brazoscountytexas.gov	6/11/2021 9:36:31 AM	SENT

Associated Case Party: SamuelC.Patterson

Name	BarNumber	Email	TimestampSubmitted	Status
Lane D.Thibodeaux		lanet1@msn.com	6/11/2021 9:36:31 AM	SENT